IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.225 OF 2005

Deepak Dyandeo Kadam & Ors. .. Appellants

vs.

Popat Pandharinath Kadam .. Respondent.

Rahul Kate for the Appellant.

Mr.R.V.Bansode for the Respondent.

CORAM : A.S.OKA, J.

DATED : 2nd May, 2005.

P.C. :

1. Heard Advocates appearing for the parties. Challenge in this Appeal from Order is to the order dated 23rd December, 2004 passed by the learned Additional District Judge, Baramati by which Yeshwant Sambhaji Taware, who is claiming to be a guardian of the Appellants is directed to hand over custody of the Appellants to the Respondent. The said Yeshwant is admittedly maternal uncle of the minors. It is not in dispute that both the parents of the children are dead. An application had been made by said Yeshwant on behalf of the Appellants who are minors for cancellation of order passed in

Misc. Application No.21 of 2003 by which the Respondent was appointed as guardian of the minor's property and person. The Respondent filed an application praying for custody of the minor children. The said application has been allowed by the impugned Judgment and Order.

2. Law is very well settled. In the matters of custody of minor children, legal rights of the persons claiming custody are of no relevance and what is of paramount importance is the welfare of the minor children. After having heard the Advocates appearing for the parties, I find that admittedly the Appellants are in the custody of the said Yeshwant Taware from May 2003. At this stage I find nothing on record to show that the said Yeshwant is not treating the minors properly or that he is not looking after minors. The prayer made in the pending application is for cancellation of earlier order by which the Respondent is appointed guardian of the minors. Pending the application, the learned Additional District Judge has directed that custody of the minor children should be disturbed. All that the learned Judge has stated in the impugned order is that as the order passed in Misc. Application No.21 of 2003 is not stayed, the

Respondent continues to be guardian duly appointed by the Court. When the learned Judge directed that custody of the minor should be disturbed, the learned Judge should have given reasons for coming to the conclusion that the welfare of the minor children requires that custody should be disturbed. In my view, the entire approach of the learned Judge is erroneous. He should not have decided the interim application made by the Respondent only on the basis of the legal rights of the parties claiming right to act as guardian. If the minors are in the custody of the said Yeshwant for last about two years, the custody should not have been disturbed while deciding the interim application when the parties have not lead any evidence. In my view, the order is unsustainable and deserves to be quashed and set aside. The application made at Exh.21 seeking direction against the Respondent for furnishing security was misconceived and said prayer could not have been entertained during the pendency of the main petition. In so far as clause No.3 of the operative part of the impugned order is concerned, in my view, the direction contained therein is in the interest of minors and therefore the Court has rightly given the said direction by passing order on application at Exhibit 22. It is

further clarified that account which Respondent will have to submit is as regards the money which is received by him on behalf of the Appellants and spent by him on minors.

3. Accordingly, I pass following order:

Clause No.1 of the impugned Judgment and Order is set aside and the application made by the Respondent at Exhibit 19 stands dismissed. Rest of the order stands confirmed subject to the observation made above.

The learned trial Judge will decide the petition No.27 of 2004 as expeditiously as possible and preferably on or before 31sr December, 2005.

All contentions of the parties in the said application are expressly kept open.

Appeal is partly allowed in above terms with no order as to costs.

. Parties and the concerned Court to act on

the authenticated copy of this order.

(A.S.Oka, J.)